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Message Text

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ACTION L-01

INFO OCT-01 SS-14 ISO-00 EUR-08 SSO-00 SCA-01 INR-05
INRE-00 /030 W
----------311502Z 123395 /45
O 311431Z JAN 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC IMMEDIATE 5171

S E C R E T SECTION 01 OF 03 BONN 01797

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E.O. 11652: XGDS 4
TAGS: EGEN, GW
SUBJECT: SENSITIVE IRS INVESTIGATION

REF: STATE 13671

SUMMARY: THE IRS PROPOSAL TO HAVE ITS REPRESENTATIVE IN BONN INTERVIEW PROMINENT FRG POLITICIANS AS INNOCENT WITNESSES IN CONNECTION WITH THE SUBJECT TAX FRAUD INVESTIGATION WOULD RAISE NUMEROUS PROBLEMS AND DIFFICULTIES. THESE INCLUDE NECESSARY NOTICE TO THE FINANCE MINISTRY AND POSSIBLY THE FOREIGN OFFICE, INCLUSION OF A CONSULAR OFFICER AT THE INTERVIEWS, AND THE LIKELIHOOD THAT IN VIEW OF THE POSSIBLE USE TO WHICH ANY INFORMATION PROVIDED WOULD BE PUT, THE INTERVIEWEES WILL NOT WISH TO PROVIDE ANY INFORMATION. END SUMMARY

1. IRS INTEREST IN HAVING ITS BONN REPRESENTATIVE INTERVIEW THE 6 GERMAN WITNESSES IN QUESTION COMES AT PARTICULARLY DISADVANTAGEOUS TIME. AS RECENTLY AS JANUARY 14, THE BONN IRS REP WAS SUMMONED TO FRG
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FONOFF LEGAL SECTION IN CONNECTION WITH HIS PREVIOUS INTERVIEWS OF CERTAIN PRIVATE GERMAN CITIZENS ON AN ENTIRELY SEPARATE MATTER (SEE HIS REPORT OF JANUARY 17 TO CHIEF, FOREIGN PROGRAMS DIVISION CP:010:4). WHILE THE FINANCE MINISTRY HAD BEEN INFORMED BY LETTER FROM HIM OF HIS INTENTION TO UNDERTAKE INTER-VIEWS, A GERMAN NATIONAL BUSINESSWOMAN BELIEVED THAT

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IRS INTERVIEWS OF OTHER PERSONS WHO WERE HER CLIENTS
STOOD TO AFFECT HER BUSINESS REPUTATION. SHE
THEREUPON HAD A PROMINENT GERMAN ATTORNEY SEND PROTEST
LETTER TO FONOFF, WHICH HAD NOT BEEN INFORMED BY
EMBASSY OR FINANCE MINISTRY OF THESE INTERVIEWS OR
THIS INTERVIEWEE'S CONCERN.

2. WHILE THE EMBASSY HAS NOT YET FULLY DISCUSSED
THIS MATTER WITH THE FONOFF LEGAL SECTION, IT APPEARS
THAT THE FONOFF HAS MADE CLEAR TO THE FINANCE MINISTRY
THAT IT EXPECTS IN THE FUTURE TO BE INFORMED WHEN
SUCH INTERVIEWS OF PRIVATE PERSONS IN FRG COULD BE
SENSITIVE OR INVOLVE DIFFICULTIES. MOREOVER, FONOFF
REP HAS STATED TO EMBOFF THAT IF NON-CONSULAR OFFICERS
ARE TO BE INVOLVED IN SUCH INTERVIEWS WHICH ARE
CONSIDERED A CONSULAR FUNCTION, THE INTERVIEW MUST
REMAIN UNDER DIRECTION OF A CONSULAR OFFICER PARTICI-
PATING IN INTERVIEW AND PRESENT THROUGHOUT THE
INTERVIEW. THIS VIEW HAS PRIVACY ACT IMPLICATIONS FOR
THE USG.

3. IN VIEW OF THE ABOVE-DESCRIBED, CURRENT,
THOUGH NOT NECESSARILY FINAL, STATUS OF THIS UNRELATED
MATTER, THE FREEDOM OF THE IRS REP AND OF MEMBERS OF
HIS OFFICE TO CONDUCT INTERVIEWS WITH THE 6 POTENTIAL
WITNESSES IS PARTICULARLY LIMITED. CLEARLY, INTER-

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VIEWS WITH THESE 6 PERSONS ARE SENSITIVE BY REASON
OF THE POSITIONS OF AT LEAST 4 OF THEM. THUS, NOT

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ONLY WOULD THE FINANCE MINISTRY NEED TO BE NOTIFIED, BUT THAT MINISTRY WOULD BE EXPECTED TO INFORM THE FRG FONOFF. THAT BEING SO, NORMAL COURTESY WOULD PROBABLY REQUIRE THAT THE EMBASSY ITSELF NOTIFY THE FONOFF OF INTENDED INTERVIEWS DIRECTLY.

4. SUCH NOTICE TO FINANCE MINISTRY AND FONOFF WOULD PROBABLY BE OBJECTIONABLE TO THESE POTENTIAL WITNESSES IN VIEW OF THE POSSIBILITY, IF NOT LIKELIHOOD, THAT WORD OF PROPOSED INTERVIEWS WOULD BE LEAKED TO THE PUBLIC IN SUCH A WAY AS TO APPEAR TO IMPLICATE THESE POLITICAL FIGURES IN THE POSSIBLE TAX FRAUD UNDER INVESTIGATION IN THE US. SUCH IMPLICATION WOULD PROBABLY BE UNAVOIDABLE NO MATTER HOW INNOCENT OF INVOLVEMENT IN THE TAX FRAUD THESE WITNESSES IN FACT MAY BE.

5. EMBASSY BELIEVES FURTHER THAT SHOULD INTERVIEWS BE SOUGHT WITH THESE WITNESSES, THEY WILL UNDOUBTEDLY, AND BEFORE GIVING ANY SUBSTANTIVE TESTIMONY, WISH TO KNOW PRECISELY WHAT POSSIBLE USE MIGHT BE MADE OF THE INFORMATION THEY GIVE. ANY EFFORT TO DESCRIBE THE

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NEED FOR THEIR TESTIMONY AS ARISING IN CONNECTION WITH A "TAX CASE" WOULD BE INADEQUATE. IT WOULD BECOME OR HAVE TO BE MADE CLEAR TO THEM THAT THEIR TESTIMONY MIGHT HAVE TO BE USED IN OPEN COURT IN A CRIMINAL OR CIVIL CASE. THIS WOULD LEAD TO THE NEED TO EXPLAIN FURTHER THAT THEY MAY BE ASKED TO PROVIDE TESTIMONY EITHER IN PERSON OR BY AFFIDAVIT. EMBASSY ANTICIPATES THAT BY THE TIME THESE WITNESSES OBTAIN THIS MUCH INFORMATION ABOUT THE POSSIBLE USE TO WHICH THEIR STATEMENTS MIGHT BE PUT AND WHAT THEY MIGHT LEAD TO, ALL OF THEM WILL BE ANXIOUS TO TERMINATE THE INTERVIEW ASAP. MOREOVER, THEY WILL PROBABLY BE AT LEAST PUZZLED THAT THEY WERE EVER INTERVIEWED BY AN OFFICIAL ASSOCIATED WITH THE EMBASSY, GIVEN THEIR POLITICAL STATURE AND THE FORESEEABLE NATURE OF THE RISKS TO WHICH THEIR TESTIMONY MIGHT EXPOSE THEM.

6. FYI. IRS REP IN BONN HAS INDICATED THAT WERE HE, DESPITE ABOVE CONSIDERATIONS, ORDERED TO SEEK TO CONDUCT THESE 6 INTERVIEWS, HE WOULD BE EXTREMELY RELUCTANT TO FAIL TO GIVE NORMAL WRITTEN NOTICE TO THE FINANCE MINISTRY. HE BELIEVES THAT SUCH CIRCUMVENTION OF NORMAL PROCEDURES WOULD WELL AFFECT FUTURE COOPERATION OF FINANCE MINISTRY WITH HIM PERSONALLY AND WITH OTHER MEMBERS OF HIS OFFICE, AND COULD THUS

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DETRIMENTALLY AFFECT THE ENTIRE OPERATION OF HIS OFFICE. END FYI.

7. AS A MERE FIELD OFFICE OF IRS, IRS REP IN BONN CANNOT MAKE JUDGMENT WHETHER INFORMATION THAT COULD (BUT PROBABLY WILL NOT) BE PROVIDED BY THESE 6 WITNESSES IS CRUCIAL TO THE IRS DECISION WHETHER OR NOT TO TURN THE MATTER OVER TO THE JUSTICE DEPARTMENT FOR POSSIBLE PROSECUTION. THIS JUDGMENT MIGHT BEST BE MADE BY THE IRS INVESTIGATIVE

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FIELD OFFICE IN DENVER WHICH IS DIRECTING THIS INVESTIGATION AND HAS COMPLETE KNOWLEDGE OF ALL ITS ASPECTS UNDER INVESTIGATION AND OF THE RESULTS COMING IN. THE EMBASSY BELIEVES IT WOULD BE PREFERABLE IF THE DEPARTMENT OF JUSTICE, WHICH WOULD CONDUCT ANY PROSECUTION, WERE TO MAKE THIS JUDGMENT BEFORE THESE INTERVIEWS ARE GIVEN SERIOUS CONSIDERATION.

8. SUMMARIZING THE ABOVE, THE EMBASSY PERCEIVES POLITICAL AND OPERATIONAL PROBLEMS WERE IRS REP TO CONDUCT THESE INTERVIEWS. IT SERIOUSLY DOUBTS THAT, WERE THESE VOLUNTARY INTERVIEWS TO BE INITIATED (WITH NECESSARY INVOLVEMENT OF US CONSULAR PERSONNEL), THE WITNESSES WOULD BE WILLING TO PROVIDE THE INFORMATION SOUGHT. CIRCUMVENTION OF THE NOTICE REQUIREMENT TO THE FINANCE MINISTRY, AND TO THE FONOFF, WOULD EXPOSE THE EMBASSY AND THE IRS OFFICE TO THE POSSIBILITY OF SERIOUS REPRIMAND SHOULD THE WITNESSES THEMSELVES COMPLAIN OR THE INFORMATION THAT THEY PROVIDE SUBSE-QUENTLY BE MADE PUBLIC IN US PROCEEDINGS. SUCH DISCLOSURE WOULD DEMONSTRATE THAT DESPITE THE RECENTLY STATED EXPECTATIONS OF BOTH THESE MINISTRIES, EMBASSY PERSONNEL PROCEEDED TO CONDUCT THESE CLEARLY

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SENSITIVE INTERVIEWS WITHOUT NOTICE TO THE FRG
GOVERNMENT.

9. AS FOR THE INTERPRETATION OF THE FRG NOTE AND
RELATED OTHER NOTES MENTIONED IN PARA 6 OF REFTEL,
THE DEPARTMENT HAS JUST RECEIVED COPIES OF THEM
FROM GERARD CHARIG, US JUSTICE DEPARTMENT ATTORNEY
ATTACHED TO CONGEN MUNICH AS CONSULAR OFFICER. THE
EMBASSY WILL BE EXAMINING THESE DOCUMENTS AND CHARIG'S
UNDERSTANDING OF THEIR INTERPRETATION AND PRACTICE
UNDER THEM, AND WILL REPORT ON THESE ASPECTS BY
SEPTEL IN THE NEAR FUTURE. EMBASSY WOULD, HOWEVER,
BE RELUCTANT TO RAISE THESE NOTES AND PRACTICE UNDER
THEM WITH THE FONOFF UNLESS THE DEPARTMENT AND THE
JUSTICE DEPARTMENT ARE PREPARED TO ACCEPT
THE POSSIBILITY THAT DOING SO MAY PROMPT THE FONOFF TO
REVIEW THE ENTIRE PRACTICE IN THIS REGARD WITHIN THE
FRG OF THE US EMBASSY AND CONSULAR PERSONNEL,
INCLUDING OFFICES FROM OTHER USG AGENCIES ATTACHED
TO THEM.

10. EMBASSY IS POUCHING COPIES OF THESE NOTES AS
RECEIVED FROM MUNICH TO THE DEPARTMENT, L/EUR-KOZAK.
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